

AMEND Senate Bill 4181 House Bill 4144

Long Term Care Community Choices Act of 2008

Section-by-Section Analysis

SECTION 1.

Deletes obsolete statutory provisions of Tenn. Code Ann. §§ 71-5-1401 through 1406 and 1409 as follows:

71-5-1401 - Legislative findings regarding the long-term care (LTC) system as it existed in 1998

71-5-1402 - The establishment of a LTC services planning council charged with formulating a LTC services plan which was to be submitted by January 1, 1999

(This legislation proposes a new LTC services plan based on the current LTC system.)

71-5-1403 - Funding for the 1998-99 fiscal year and recurring funds pertaining to the January 1, 1999 LTC services plan

71-5-1404 - Authorization to promulgate rules and regulations pertaining to the January 1, 1999 LTC services plan (to be replaced with Section 18 providing similar authority for the new LTC services plan)

71-5-1405 - Clarification regarding Shelby and ADAPT Waiver programs which have now been consolidated into the Statewide Elderly and Disabled Home and Community Based Services (HCBS) Waiver Program

71-5-1406 - Monitoring and reporting requirements pertaining to Waivers implemented pursuant to the January 1, 1999 LTC services plan

71-5-1409 - Reporting requirements pertaining to the January 1, 1999 LTC services plan

SECTION 2. Entitles the act as the “Long Term Care Community Choices Act of 2008”

SECTION 3. Sets forth the Guiding Principles of a Restructured Long-Term Care System

- Aging is not a disease, but rather a natural process; support services in the home are needed to allow persons to age in place
- A “whole person” approach to care delivery
- Promote independence, choice, dignity, and quality of life for the elderly and/or people with physical disabilities; offer consumer directed options.
- Reduce fragmentation and offer a seamless approach to meeting people’s needs, including one-stop shopping for information about LTC options and one-stop shopping for services
- Support and sustain family caregiving networks
- Care in the most integrated setting appropriate and cost-effective way possible in order to use existing funding to serve more people
- A global budget for all LTC services which allows funding to follow the person and helps to achieve a more equitable balance between nursing facility and HCBS expenditures
- Expanded residential alternatives to nursing facility care, with nursing facility care as an integral part of the LTC continuum
- A comprehensive continuous quality improvement strategy across the entire continuum of LTC services that focuses on customer perceptions of quality

SECTION 4.

Defines key terms.

SECTION 5. Expansion of HCBS through Fully Integrated LTC System

- Integrates long-term care services within the existing managed care system, building in strong consumer protections and aligning incentives in order to expand access to more cost-effective HCBS alternatives to nursing home care and rebalance institutional/HCBS funding; may include expansion of PACE program sites
- Provides for person-centered care coordination across all primary, acute, and long-term care services
- Clarifies that there is no entitlement to HCBS, but sets forth clear intent regarding access to HCBS for the greatest number of eligible persons possible
- Makes clear that HCBS must be cost-effective, i.e., that the cost of HCBS (including Home Health and Private Duty Nursing services, as well as 1915(c) waiver services) cannot exceed the cost of the applicable level of nursing home care

SECTION 6. Single Point of Entry

Provides for a single point of entry into the LTC system which may include counseling and assistance, screening and intake, facilitated Medicaid enrollment and level of care processes for persons not yet Medicaid eligible

SECTION 7. Streamlined Eligibility

Requires streamlined eligibility processes for HCBS programs and services

SECTION 8. Level of Care Criteria

- Provides for the development of level of care criteria which targets the most intensive LTC benefit to persons with the highest level of need
- Clarifies that persons currently in nursing homes are “grandfathered,” i.e., not required to meet new level of care requirements to continue receiving nursing facility services
- Clarifies that persons currently in HCBS waivers are also “grandfathered,” i.e., not required to meet new level of care requirements to continue receiving HCBS waiver services
- Provides for the submission of a waiver amendment in order to allow persons who meet a less restrictive level of care (i.e., persons “at risk” of institutional care) to receive HCBS

SECTION 9. HCBS Initiative

Provides for strategies to encourage the use of cost-effective HCBS in lieu of institutional care, i.e., to delay or prevent unwanted nursing facility placement when more cost-effective care in the community is appropriate, including providing information regarding HCBS to enrollees and family members and care coordination to facilitate timely transition back to the home or community setting, when appropriate

SECTION 10. Nursing Facility-to-Community Transitions

Specifies contractor requirements related to identifying and assessing nursing facility residents appropriate for transition to home and community-based settings, and for planning and facilitating such transitions timely

- Permits coordination and/or subcontracts with local community based organizations to assist in identification, planning and facilitation processes
- Permits as a cost-effective alternative a transition cost allowance to help cover rent/utility deposits, essential household items, etc.

SECTION 11. Nursing Facility Diversification

Provides for assistance to Nursing Facilities to help them diversify their business, including expansion to HCBS; may include training and technical assistance, streamlined provider enrollment processes, and development of special acuity-based rates for chronic care populations

SECTION 12. Expansion of Community-Based Residential Alternatives

- Provides for expansion of cost-effective community-based residential alternatives to institutional care
- Requires collaboration between TennCare and the Department of Health to ensure that licensure requirements for facilities that provide community-based residential alternatives to institutional care do not force people into nursing facilities when their needs can be cost-effectively met in a community setting by a more intensive level or combination of services

SECTION 13. Nursing Facility Reimbursement

Provides for the development and implementation of an acuity-based reimbursement methodology for nursing facility services as an alternative to the current cost-based reimbursement system

- May include enhanced rates for specified chronic care populations
- Phased in over a period not to exceed two (2) years

SECTION 14. Consumer-Directed Options

Provides for consumer-direction options for persons receiving HCBS, which may include the ability to select, direct, or employ unskilled support services staff, and the ability to manage, through a fiscal intermediary, a needs-based budget; money is not provided to the member, but rather directed through a fiscal intermediary with clear reporting and accountability for all funds expended on behalf of the member

SECTION 15. Quality Assurance

Provides for quality assurance/quality improvement strategies to ensure the quality of LTC services provided under the Act, which may include electronic visit verification, HEDIS measures for long-term care, and which shall include mechanisms to ensure direct feedback from members and family or other caregivers regarding the quality of services received

SECTION 16. Expansion of State-funded Options Program

Provides for the Commissioner to designate in each year's appropriations bill, subject to available funding, an amount that can be used to increase access to HCBS for non-Medicaid eligible persons through the state-funded Options program

SECTION 17.

Clarifies that the Commissioner shall provide Medicaid long-term care services subject to the availability of funding

SECTION 18.

Provides authorization to promulgate rules to implement this legislation

SECTION 19.

Clarifies that upon implementing the acuity-based reimbursement system for nursing facility services, the [cost-based] per diem methodology set forth in 71-5-105(a)(3)(B) and (C) are no longer applicable

SECTION 20.

Provides an exemption to the Nurse Practice Act for family members, friends, aides and attendants employed by or acting upon the direction of an HCBS enrollee or authorized family member when performing routine health maintenance activities that do not require professional nursing judgment

SECTIONS 21 through 30.

These sections modify statutory provisions regarding Assisted-Care Living Facility Services to allow the benefit to be better utilized as an alternative to institutional care, and to permit persons to "age in place" so long as the treating physician certifies that the person's needs can be safely and effectively met in the ACLF, specifically:

SECTION 21. Permits hospice services to be delivered in an ACLF when prescribed by the treating physician

SECTION 22. Permits home health aide services (along with all other home health services as already permitted) and hospice services to be provided to ACLF residents when such care is beyond the scope of service the ACLF is qualified or obligated to provide pursuant to the ACLF benefit

SECTION 23. Clarifies that an ACLF is obligated to transfer an ACLF resident to a more intensive (i.e., institutional) setting only when the resident's treating physician is not willing to certify that the resident's needs can be safely and effectively met by care provided in the ACLF, including services as specified in subdivision (4)(B)(ii)

SECTION 24. Permits persons with conditions specified in subdivision (4)(A)(i)-(xiii) to be admitted to or remain in an ACLF so long as the person's treating physician is willing to certify that the person's needs can be safely and effectively met by care provided in the ACLF, including services as specified in subdivision (4)(B)(ii)

SECTION 25. Permits persons with conditions specified in subdivision (4)(B)(i)(a)-(d) to be admitted to or remain in an ACLF so long as the person's treating physician is willing to certify that the person's needs can be safely and effectively met by care provided in the ACLF, including services as specified in subdivision (4)(B)(ii)

SECTION 26. Deletes reference to an earlier exception to a requirement regarding documented history of self-care which is not applicable under the proposed new language

SECTION 27. Clarifies that an ACLF is obligated to transfer an ACLF resident who has a condition specified in subdivision (5)(B)(i)-(iii) to a more intensive (i.e., institutional) setting only when the resident's treating physician is not willing to certify that the resident's needs can be safely and effectively met by care provided in the ACLF, including services as specified in subdivision (4)(B)(ii)

SECTION 28. Permits ACLF residents who qualify for hospice care to receive hospice services in the ACLF so long as the person's treating physician certifies that the person's needs can be safely and effectively met by care provided in the ACLF, including services as specified in subdivision (4)(B)(ii)

SECTION 29. Clarifies that the 21-day continued stay period and any extensions thereto for an ACLF resident who has a condition specified in subdivision (5)(B)(i)-(iii) is applicable only when the resident's treating physician is not willing to certify that the resident's needs can be safely and effectively met by care provided in the ACLF

SECTION 30. Deletes the requirement that an ACLF is obligated to transfer an ACLF resident who requires four (4) or more skilled nursing visits per week to a hospital or nursing facility.
COMMENT: In accordance with the new language, such transfer would be required only when the resident's treating physician is not willing to certify that the resident's needs can be safely and effectively met by care provided in the ACLF, including services as specified in subdivision (4)(B)(ii)

SECTION 31. Effective Date

Specifies that the act becomes effective on July 1, 2008 (although many sections require for "development and implementation" that will be ongoing after the act is effective)